

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
04 JAN 16 PM 3:53
CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

CASE NO.: 8:03-CR-77-T-30-TBM

**RESPONSE BY THE UNITED STATES REGARDING
THE LENGTH OF DETENTION FOR SAMEEH HAMMOUDEH**

The Court requested the government to analyze the issue of the length of expected detention in this case. The government hereby states that the anticipated length of detention in this case is not unconstitutional and in support thereof states the following:

At the arraignment in this case in March, 2003, Sameeh Hammoudeh and co-defendants Fariz and Ballut waived speed trial, recognizing that they could possibly be detained. In May, at a hearing before the Court, these same three defendants said they could not be ready for a June trial when then counsel for Al-Arian moved that the trial be set for June pursuant to his view of the speedy trial situation. Subsequently, the Court held a hearing in June and made findings binding all the defendants for the same trial date and set trial for approximately eighteen months away at the request of defense counsel, including counsel for Mr. Hammoudeh. The Court found that the continuance was appropriate to meet the ends of justice.

To date, the defendant has not filed a motion for release because of excessive detention. The defendant's motion to set bail makes no specific request based on the length of detention and only urges that the Court consider it.

A defendant may be detained prior to trial consistent with the Due Process Clause of the Fifth Amendment so long as that confinement does not amount to punishment. Bell v. Wolfish, 441 U.S. 520, 535 (1979). The pretrial detention of a defendant, when of reasonable duration, serves important regulatory purposes, including the prevention of flight, and the protection of the community from a potentially dangerous individual. United States v. Salerno, 481 U.S. 739, 747-49 (1987). However, when detention becomes "excessively prolonged," it may no longer be reasonable in relation to the regulatory goals of detention, in which event a violation of due process occurs. See Salerno, 481 U.S. at 747 n.4. In order to determine whether the length of pretrial detention has become constitutionally excessive, the Court must weigh three factors: (1) the length of detention; (2) the extent of the government's responsibility for the delay of the trial; and (3) the strength of the evidence upon which the detention was based, that is, the evidence concerning risk of flight and danger to the community. United States v. Orena, 986 F.2d 628, 630 (2d Cir. 1993); United States v. Oheda-Rios, 846 F.2d 167, 169 (2d Cir. 1981).

A. Length of Pretrial Detention

At the present time, the defendant has been detained for approximately eleven months. The trial of this case is scheduled for January, 2005. Hence, the defendant could be detained for approximately twenty-three months before his trial begins. While

several courts have found that a period of pretrial detention of this length is a factor weighing in the defendant's favor in finding a due process violation, see United States v. Gonzales-Claudio, 806 F.2d 334, 341 (2d Cir.), cert dismissed, 479 U.S. 978 (1986); United States v. Zannino, 798 F.2d 544, 548 (1st Cir. 1986), length of detention "will rarely by itself offend due process." Orena, 986 F.2d at 641. Additionally, the defendant has joined other defendants moving this Court to continue the trial of this matter until January, 2005, so that he would be prepared for trial. The defendant has received the trial date he desired. Hence, the period of detention in this case does not, standing alone, establish that pretrial confinement will exceed constitutional limits.

B. Delay Attributed to the Government

The defendant in this case asked that his trial be set in January, 2005, and the Court accommodated him. As previously stated, the defendant got what he desired. The Court has been closely monitoring the discovery process in this case and there has been no complaint by this defendant regarding that process. Hence, this factor weighs against a suggestion of a due process violation.

C. The Strength of Evidence Supporting Detention

The defendant was afforded an extensive multi-day detention hearing for which he was given several weeks to prepare. The Court stated in its Order (Doc. 74) that the defendant was presumed to be a danger to the community pursuant to 18 U.S.C. § 3142(e). (Doc. 74, pg. 21.) The Court also recognized that the defendant was presumed to be a flight risk pursuant to 18 U.S.C. § 3142(e). (Doc. 74, pg. 24).

The Court reviewed some of the evidence against the defendant and noted that it was substantial as there was evidence that he was being paid a salary by the PIJ, his salary had been discussed by high-ranking PIJ members, he was a close confidant of Sami Al-Arian, he was one of the individuals that Sami Al-Arian reached out to immediately upon the death of Fathi Shiqaqi, and that his involvement with the PIJ continued throughout the time period of the Indictment. Interestingly, the Court noted that there was a dichotomy of his private versus his public life and stated that that revealed much about the character of Mr. Hammoudeh and other defendants and the tenacity of their commitment to a pattern of deception for achieving the PIJ's goals. (Doc. 74, pg. 20). The Court also noted that the defendant has previously hidden and obfuscated his PIJ association and referenced as an example his conduct on March 16, 2000, in which he declared under a penalty of perjury that he had never been associated with or assisted an organization that engaged in any form of terrorism, referring to Count Forty-Six of the Indictment. (Doc. 74, pg. 20).

In analyzing the defendant to determine whether he was a danger to the community, the Court noted that he participated in PIJ activities for many years, repeatedly committed acts supporting the PIJ and was tenaciously loyal to the PIJ and therefore fit the classic recidivist model. (Doc. 74, pg. 21). The Court found that the government proved by clear and convincing evidence that the defendant poses a danger to the community and no condition could be fashioned that would reasonable conform his behavior. (Doc. 74, pg. 22).

The Court analyzed the defendant to determine whether he was a flight risk. The Court noted that the defendant submitted approximately \$1,025,000 in bonds and

personal sureties to support his release. Nevertheless, the Court found by a preponderance of the evidence that it could not reasonably set any condition or combination of conditions that would assure the defendant's presence as required. (Doc. 74, Page 25). The Court reached that conclusion after examining the rationale for finding the defendant might be a flight risk and noted that since the November 1995 searches, the defendant had known the government suspected him yet he still supported the PIJ. (Doc. 74, pg. 24-25). The Court determined that the defendant valued the PIJ more than family or lifestyle and accepted the prospect that his family could be devastated and he would be financially hurt by the exposure of his activities. (Doc. 24, pg. 25). The Court determined that supporting the Palestinian Islamic Jihad's vision of Palestine was more important than a successful life in the United States to Mr. Hammoudeh and that a place to which he would be flee would be more important than the place he would be leaving. (Doc. 74, pg. 25). The Court also noted and there was a discussion at trial that the deportation of Mr. Hammoudeh was a reality in this case.

The Court applied the factors enumerated in United States v. El-Hage, 213 F.3d 74, 79-82 (2d Cir. 2000) and found that the length pretrial detention envisioned for the defendant would not violate his constitutional guarantees. (Doc. 74, pg. 25). The Court noted that the expected delay to trial would be approximately that in the El-Hage case and that the government has not caused the delay, the charges are grave, and the strength of the government's case is substantial.

The defendant's lawful status in the United States was that of a student. Mr. Hammoudeh is no longer a student. Mr. Hammoudeh has repeatedly lied under oath and he is a salaried employee of the Palestinian Islamic Jihad and has been so for

many years. The government reasserts that Hammoudeh is a danger to the community and a risk of flight and should remain detained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent
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